

Before the
MAHARASHTRA ELECTRICITY REGULATORY COMMISSION
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Case No. 9 of 2011

Date: 14 January, 2016

CORAM: Shri. Azeez M. Khan, Member
Shri. Deepak Lad, Member

Petition of M/s JSW Energy Ltd. for adjudication of dispute between JSW Energy Ltd. and Maharashtra State Electricity Distribution Company Limited (MSEDCL).

M/s JSW Energy Ltd.Petitioner
V/s
Maharashtra State Electricity Distribution Company Ltd. ...Respondent

Advocate/ Representative for the Petitioner: Shri. Fredun Devitre (Sr.Adv.)

Advocate/ Representative for the Respondent: Smt. Deepa Chawan (Adv.)

Daily Order

Heard the Advocates of the Petitioner and Respondent.

The Commission informed the parties that since the final Order could not be issued before the Chairperson demitted Office on 9 November, 2015, this matter is scheduled for rehearing. Parties requested the Commission to take on record all their earlier submissions and gave their consent to hear and decide this matter in continuance of the earlier proceedings.

Advocate of Petitioner mentioned that JSW had prayed for adjudication of dispute or to refer the dispute for adjudication through Arbitration, during the proceedings of Case No. 9 of 2011. On 16 November, 2011, the Commission dismissed the Petition and ruled that revocation of licence of the fuel supplier by Indonesian authorities is not within the scope and ambit of Force Majeure under Article 12 of the Power Purchase Agreement, and the claim of JSW is not sustainable.

APTEL vide its Judgment dated 2 December, 2013 has allowed JSW's Appeal and set aside Commission's Order in Case No. 9 of 2011, and remanded the matter back to the Commission for examining the issue raised by the Distribution Licensee regarding the knowledge of JSW on the on-going litigation and amendment to the Coal Supply Agreement and the facts thereon.

The Commission asked the advocate of Petitioner regarding any due-diligence undertaken by JSW during the finalisation of coal supplier. The Commission also enquired regarding the developments during the period from 27 October, 2008 to 27 August, 2009.

Advocate of Petitioner reiterated its submission regarding consideration of the event of cancellation of coal mines as a Force Majeure, which has been upheld by APTEL. He also stated that due diligence by JSW was limited to the coal supplier's record or reputation for supplying the coal to a party and whether he has a valid mining licence in place. The Petitioner further stated that the remand by APTEL to the Commission is on limited ground to the extent of knowledge of the Petitioner regarding the ongoing litigation and amendment of Coal Supply Agreement and facts thereon.

Advocate of the Respondent submitted that the Commission in previous proceedings had already ruled that the event of cancellation of coal mines is not a Force Majeure. She further contended that these facts of the awareness of JSW regarding litigations in regards to the coal mines at the time of bidding, ought to have been known to the Appellant (JSW). Therefore, the prayers of the Petitioner are to be rejected.

Advocate of the Respondent claimed that mine was not available with SBC which was in violation of Article 3.1.2.

The Case is reserved for Orders.

**Sd/-
(Deepak Lad)
Member**

**Sd/-
(Azeez M. Khan)
Member**